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# Appeals

## Our Role in Resolving Penalty Issues

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# Appeals Mission

To resolve tax controversies, without litigation, on a basis which is fair and impartial to both the Government and the taxpayer in a manner that will enhance voluntary compliance and public confidence in the integrity and efficiency of the Service.



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# Independence & Authorities

## RRA '98 – Statutory Requirements

- An independent Appeals organization
- Prohibition of ex parte communications

## Code of Federal Regulations 601.106

- Administrative Authorities

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# Accomplishing our Mission

Listening and considering both sides

Considering and evaluating all arguments  
and available information

Determining – independently – the best  
settlement by weighing the hazards of  
litigation



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# Appeals in FY 2010

Over 135,000 cases received

Over 133,000 cases resolved

Campus closures – 64,000 cases

Field closures – 69,000 cases

Collection cases – 190 days

Examination cases – 295 days



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# Preparer Penalty Cases

IRC 6694(a) and 6694(b)

Burden of proof is on the government for  
IRC 6694(b).

Succeeding statements apply to 6694(a)

For returns prepared after May 25, 2007  
– increased penalty amounts for IRC  
6694(a)



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# Preparer's Burden on Position Taken

Realistic possibility of being sustained on  
its merits

Reasonable cause for position

Such position was maintained in good  
faith

Position was adequately disclosed



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# Preparer Penalty Case Study





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# Facts

Wage earner and wife

Married, two children with one in college

New return preparer – client contacted  
new preparer late in the filing season

Consulting business – holds 50 percent in  
LLC – remaining 50 percent held by  
brother



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# Facts

K-1 from LLC received on April 13  
reflecting a \$<185,000> distributable  
loss

Client provides cancelled checks from  
personal account to establish sufficient  
basis

After deducting loss, Form 1040 reports a  
refund of all federal tax withheld



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# The Examination

Form 1040 under examination 18 months later

Preparer is representing client

LLC was also examined

IRS proposes income on LLC was fictitious

LLC deductions – all personal expenses of taxpayer and brother



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# The Examination

Taxpayer was sold a tax scheme by  
someone unknown to the preparer

Preparer concerned – claimed LLC loss  
with nothing more than the Sch K-1



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# Preparer Penalty

Disallowance of loss – taxpayer facing a material deficiency, penalties and interest

Taxpayer might be subject to criminal investigation

Appears loss with the disallowed and IRC 6662 penalties will be proposed



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# Let's Listen in on the Preparer Penalty Conference

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# How would you settle this penalty?

Sustain the 6694(a) Preparer Penalty in full?

Sustain in part considering any hazards of litigation?

Concede in full?



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# IRC 6038(b) Case Study



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# Facts

IRC 6038(b)(1) – Failure to File Form 5471

Penalty based on failure to disclose

- \$10,000 per form per year
- Continuance penalty of \$10,000 per month up to \$50,000 (IRC 6038(b)(2))

Client now in third month since original notice



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# Appeals Role

Verify statute

Read protest

Review report from compliance

Review transcripts

Referral to Appeals Technical Guidance /  
International Specialists



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# Appeals International Programs

Ensures nationwide uniform and consistent settlement of issues

Enhances identification and timely resolution of international issues

Provides vehicle for coordination of technical issues



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# Weighing the Hazards of Litigation

Factual Hazards

Legal Hazards



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# Office of Chief Counsel

Reasonable cause criteria used to abate  
IRS 6651(a)(1) may be used to abate  
IRC 6038

Requires taxpayer to affirmatively  
establish failure

- Due to reasonable cause
- Not willful neglect



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# Representing Your Client

Come prepared – be ready to resolve the case

Know all facts

Know about the preparation of the return

Know about the qualifications of the preparer



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# Representing Your Client

Know how preparer was chosen

Know what constitutes reasonable cause  
(IRM 20.1.1.3.2)

Know the case law on reasonable cause

Make an offer to settle



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# Alternative Dispute Resolution

Fast Track Mediation (FTM)

Fast Track Settlement (FTS)

Post Appeals Mediation (PAM)





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# For more information...

Visit Appeals at [www.irs.gov/appeals](http://www.irs.gov/appeals)



The screenshot shows the IRS.gov website with the 'Appeals' section selected. The page is titled 'Appeals... Resolving Tax Disputes'. On the left, there are links for 'Individuals Topics' and 'IRS Resources'. The main content area lists various topics under 'Appeals... Resolving Tax Disputes', including 'What Can Appeals Do for You?', 'Is Appeals the Place for You?', 'Are You Ready to Request an Appeals Conference or Hearing?', 'Preparing a Request for Appeals', 'What Can You Expect from Appeals?', 'Appeals Online Self-Help Tools', 'Alternative Dispute Resolution', 'Technical Guidance-International Programs', and 'Art Appraisal Services'. A red arrow points to the 'Technical Guidance-International Programs' link.

**Individuals Topics**

- Abusive Tax Shelters
- Appeal a Tax Dispute
- Taxpayer Rights
- Online Payment Agreement
- Paying a Balance Due
- More Topics...

**IRS Resources**

- Compliance & Enforcement
- Contact My Local Office
- e-file
- Forms and Publications
- Newsroom
- Frequently Asked Questions
- Taxpayer Advocate Service
- Where To File

**Appeals... Resolving Tax Disputes**

**What Can Appeals Do for You?**  
The Appeals mission is to resolve tax controversies, without litigation, on a basis which is fair and impartial to both the Government and the taxpayer in a manner that will enhance voluntary compliance and public confidence in the integrity and efficiency of the Service.

**Is Appeals the Place for You?**  
Appeals resolves over 100,000 cases per year.

**Are You Ready to Request an Appeals Conference or Hearing?**  
You can identify and explain the issues in dispute.

**Preparing a Request for Appeals**  
You're ready to file a protest. Here's the information you will need.

**What Can You Expect from Appeals?**  
Appeals will take a fresh look at your case and make a fair and impartial decision.

**Appeals Online Self-Help Tools**  
These are interactive tools that guide you to an outcome based on answers you provide. They deal with some of the most frequently encountered problems, such as: a rejection of a request for innocent spouse relief; denial of a request for abatement of certain delinquency penalties; and rejection of an Offer in Compromise.

**Alternative Dispute Resolution**  
There are ways to resolve tax issues faster.

**Technical Guidance-International Programs**  
Compliance Coordinated Issues, Appeals Coordinated Issues, Appeals Emerging Issues

**Art Appraisal Services**  
Taxpayer cases selected for audit containing artwork are referred to the Art Appraisal Services for review by an Art Advisory Panel.

**Online Videos and Podcasts of the Appeals Process**  
Check out videos and podcasts on what to expect in the Appeals process.

**Forms and Publications about Your Appeal Rights**  
Official IRS resources about the Appeals process and your rights as a taxpayer...

**Careers with Appeals**  
Rewarding opportunities, excellent benefits, and great people.

**Examination**  
Appealing Examination Issues

**Collection**  
Appealing Collection Issues

## Issue Index for Technical Guidance- International Programs